Supreme Court, U.S.
FILED

No. 091155 MAR 13 2010

OFFICE OF THE CLERK

In the

Supreme Court of the United States

Commonwealth of Massachusetts,
Respondent

v.

Douglas Shukert,
Petitioner

On Petition for Writ of Certiorari
to the Massachusetts Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Douglas Shukert
Petitioner, pro se
7703 49th Ave. N.
New Hope, MN 55428-4214
Tel. (763) 533-4759
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Questions Presented

1. Does the fact that the police neglected to follow the procedure established by law invalidate the arrest?

2. Did the improper application of hearsay rules during the trial prevent the defendant from telling his side of the story?

3. Did the judge's obvious bias prevent a fair trial?

4. Can a man be charged with two or more separate crimes for a single action?

5. Is it legal to accuse someone of saying one thing and convict him of saying something else?

6. Do Massachusetts laws on pretrial involuntary hospitalization violate Amendments V and XIV and other laws that prohibit incarceration without trial?

List of Parties

All parties appear in the caption of the case on the cover page.

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In the

Supreme Court of the United States

Petition for Writ of Certiorari

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

I. Opinions Below

{X} For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Norfolk County District Court, Dedham, MA appears at Appendix B to the petition and is unpublished.

II. Jurisdiction

[X] For cases from state courts:

The date on which the highest state court decided my case was October 29, 2009. A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was there after denied on the following date: December 22, 2009, and a copy of the order denying rehearing appears at Appendix D.

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. §1257(a).

III. Constitutional and Statutory Provisions Involved

Massachusetts General Laws Chapter 275: Section 2. Complaint of threat to commit crime

If complaint is made to any such court or justice that a person has threatened to commit a crime against the person or property of another, such court or justice shall examine the complainant and any witnesses who may be produced, on oath, reduce the complaint to writing and cause it to be subscribed by the complainant.

Massachusetts General Laws Chapter 123: Section 15. Competence to stand trial or criminal responsibility; examination; period of observation; reports; hearing; commitment; delinquents

Section 15. (a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial and criminal responsibility.

Section 15. (b) After the examination described in paragraph (a), the court may order that the person be hospitalized at a facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for

observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. Copies of the complaints or indictments and the physician's or psychologist's report under paragraph (a) shall be delivered to the facility or said hospital with the person. If, before the expiration of such twenty day period, an examining qualified physician or an examining qualified psychologist believes that observation for more than twenty days is necessary, he shall so notify the court and shall request in writing an extension of the twenty day period, specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court may extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of hospitalization; provided, however, if the person requests continued care and treatment during the pendency [sic] of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV: 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV. Statement of the Case

This case started with a simple argument between Petitioner, Douglas Shukert, and the superintendent of Brookline Public Schools, William Lupini. Brookline is a small white community on the western fringe of Boston. Brookline has its own police force, its own magistrate and its own court, all the legal machinery to dispatch justice swiftly and effectively. The parties argued vehemently about the right of the Petitioner's children to attend public school. In the end, Lupini called the police; Douglas was arrested, charged and convicted of disorderly conduct, two counts of threat to commit a crime, assault and battery on a police officer and resisting arrest.

1. On September 6, 2006 Douglas argued with several Brookline School administrators who were trying to keep his two children from attending public school in Brookline. The argument ended with Douglas asking superintendent Lupini, "If you want to go, let's step outside." As Douglas was leaving the school department office, Lupini had his assistant call the Brookline police.
2. Police officers Sullivan and Malinn responded to Lupini's call. The superintendent exaggerated the situation, claiming that "An irate parent came into my office and threatened to beat me up."
3. Officer Malinn ignored the process of law which requires a warrant to be issued for complaints of threats (Mass. Gen. Laws Chapter 275 Section 2) and went out to search for the suspect. Officer Malinn confronted Douglas near 28 Park Street in Brookline. When the police officer called his name, Douglas responded, "Fuck off."
4. For that, Officer Malinn accosted Douglas, threw him down on the sidewalk and arrested him for "assault."

5. Other officers arrived, who roughed up Douglas before handcuffing him and taking him to the police station for booking and fingerprinting.
6. The police continued to harass Douglas in custody and coerced him into talking and into signing documents.
7. Since Malinn had no cause for an arrest (he had neither a warrant, nor had he witnessed a crime, nor is swearing at an officer against the law), Officer Malinn fabricated justification for the arrest and lied about the incident in his police report (See Appendix E, page 1).
8. Douglas was charged with Assault and Battery on a police officer, resisting arrest, disorderly language, threat to "kill" Officer Ward and threat to harm superintendent Lupini. Douglas was not shown a copy of the police report, nor was he allowed to plead. Instead, after a 5-minute interview with a court psychiatrist, Douglas was declared insane, and without the benefit of a trial, Judge May of Brookline District Court ordered him to 20 days incarceration for observation and evaluation (MGL c. 123 s. 15).
9. At trial on June 5, 2007, in order to secure a conviction, Officers Sullivan, Ward and Malinn all lied during testimony.

V. Disposition in the lower courts

1. Arrest and Booking – September 6, 2006, approximately 3:30 p.m. Brookline, Massachusetts. Petitioner was arrested for simple assault.
2. Arraignment – September 7, 2006, approximately 10:00 a.m. Brookline Municipal Court. Petitioner was charged with Assault and Battery on a police officer, resisting arrest, disorderly conduct and two counts of threatening to commit a crime. Bail set at $5000. Plea of "not guilty" entered on behalf of defendant. Defendant sent to Lindeman State Mental Hospital for 20-day psychiatric evaluation.
3. Psychiatric evaluation was negative. Released on $5000 bail – September 26, 2006.
4. Trial by Jury – June 4 -7, 2007, Dedham District Court. Though no material evidence (other than the testimony of his accusers) was presented at trial, Douglas was found guilty of all five counts against him. (See Appendix B)
5. Psychiatric evaluation - June 7 - 26, 2007 at Westborough State Hospital. Evaluators recommended anger management.
6. Sentencing – June 26, 2007, Dedham District Court. Defendant was sentenced to 1 year in jail with 42 days served and the balance suspended along with 1 year administrative probation. Defendant must also complete an anger management program. (See Appendix B)
7. On January 27, 2009 the Massachusetts Court of Appeals upheld the lower court's decision and on May 13, 2009 refused to reconsider the case. (See Appendix A)
8. On October 29, 2009 the Supreme Judicial Court denied the defendant's application for further appellate review (see Appendix C).

9. And on December 22, 2009 Massachusetts Supreme Judicial Court refused to reconsider its decision. (See Appendix D)
10. The Petitioner having exhausted all recourse for justice in the State Courts now appeals to the United States Supreme Court.

VI. Reasons for Granting the Petition

Introduction

Rule 10 states that the Supreme Court is interested in cases where the State court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. This is just one such case. The Supreme Court may be interested in cases where the accused person is not given a fair trial. A fair trial should follow due process of law, and cover three main parts, 1) the defendant was made aware of the process against him, 2) the judge or judges were impartial, and 3) the defendant was allowed to present his side of the story. In this case, the police did not follow lawful procedure for arrest, the defendant was prevented by misapplication of hearsay laws from telling his side of the story, and the judge was partial to the prosecution.

There is so much wrong with this case, I do not know where to begin. The alleged "victims" lied to the police. The police believed the liars and not the defendant. The defendant was arrested for asking Lupini if he wanted to step outside and for swearing at a cop. The police brutalized the defendant, did not properly explain his rights or why he was being arrested, and harassed him in custody. Without a warrant, the police searched the defendant's bag and his apartment. For one single act, the defendant was charged with disorderly conduct, assault and battery, and resisting arrest (triple jeopardy). The defendant was accused of saying, "I'm going to take you out" and convicted of saying, "I ought to take you outside." The defendant was incarcerated 20 days before the trial. Due to a "no trespass" order, he was hindered from looking for witnesses. No witnesses were deposed. The judge slandered the defendant in court, assumed he was guilty of some crime, and expressed favoritism for the Commonwealth and its

witnesses. The Commonwealth used false witnesses to prove its case. Because of misapplication of hearsay rules, the defendant was prevented from telling his side of the story. At the end of the trial the defendant was stripped naked and constrained in shackles and handcuffs all night in gaol. The punishments he endured far exceeded any damage caused by his alleged crimes.

This case is important because I believe my experience is not unusual, but is typical of the way states' judicial systems treat criminal suspects. They destroy them, and in the process destroy their own society, too.

1. Does the fact that Officer Malinn neglected to follow procedures established by law invalidate the arrest?

In order for a police officer to affect a legal arrest, he must either witness a crime or produce a warrant (Wagenmann v. Adams, 1987, CA1 Mass, 829 F2d 196). "To determine whether the stop was proper, the Court must first examine the point at which the defendant was stopped," (Purnell v. State, 832 A.2d 714, 719, Del. 2003). At the point at which the defendant was stopped, Malinn witnessed the defendant walking up Park Street (See Appendix E page E25 lines 6-7 and page E29 lines 20-22) which is not a crime, and Malinn had no warrant. (See also Terry v. Ohio, 392 U.S. 1, 16-19, 1968, "Probable cause ... must be satisfied by conditions existing prior to the policeman's stop.")

Malinn blocked the defendant's way and attempted to conduct a "threshold enquiry." (See Appendix E page E28 lines 21-22) "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person," (Terry v. Ohio). The defendant was not allowed to "walk away" until posting bail on September 26. The reason for the seizure was to investigate a complaint of the defendant's threatening school superintendent William Lupini. In Cady v. Dombrowski (413 U.S. 433, 1973), the Supreme Court emphasized that a threshold enquiry must be "totally divorced from the detection, investigation, or

acquisition of evidence relating to violation of a criminal statute."

But arresting someone for a threat requires a warrant. Under Massachusetts General Laws, Chapter 275, Section 2, "If complaint is made to any such court or justice that a person has threatened to commit a crime against the person or property of another, such court of justice shall examine the complainant and any witnesses who may be produced, on oath, reduce the complain to writing and cause it to be subscribed by the complainant." In other words, "the statutory framework requires complaint to be submitted to and reviewed by judicial officer and that warrant issue from such court before any arrest may be conducted there under." (See Wagenmann v. Adams.) Officer Malinn did not have or even attempt to obtain such a warrant.

When confronted, the defendant swore at Malinn, refused to cooperate in the inquiry and attempted to leave, which is his right. Note that swearing in itself is not a crime (see Commonwealth v. a Juvenile, 1975, 368 Mass 580, 334 Ne2d 617). When the defendant attempted to leave, Malinn threw him to the ground and arrested him, later claiming that the defendant intentionally bumped his shoulder and was arrested for Assault and Battery (See Appendix E page E6 lines 29-30 and page E26 lines 12-15).

Whether the defendant bumped Malinn or not does not validate the arrest. A crime such as assault and battery requires criminal intent. It is a huge stretch of the truth for Malinn to imagine that the defendant intended to do anything but leave. Otherwise, the only motive for intentionally bumping a police officer would be to get oneself arrested. Since no one in their right mind would intentionally try to get arrested, one cannot assume that the defendant intentionally bumped into Malinn, if he actually bumped into Malinn at all.

2. Did misapplication of hearsay rules prevent the defendant from telling his side of the incident?

One of the basic concepts of a fair trial is allowing the defendant to tell his side of the story. Because of a misconception of what is meant by "hearsay," during the trial, Judge Hogan Sullivan allowed no witness to repeat anything that someone else said, except that anyone could repeat anything the defendant said (See Appendix E page E32 lines 7 & 14, and page E33 line 8 to E34 line 8). This misapplication of hearsay rules prevented the defendant from telling his side of the story, because he was only allowed to repeat what he himself said and not what anyone else said to him. This crippled the defense because the jury never got the whole story.

Hearsay: Simon Greenfield's "Law of Evidence" page 155 section 100, "Hearsay distinguished from original evidence. It does not follow, because the writing or words in question are those of a third party person, not under oath, that therefore, they are to be considered as hearsay. On the contrary, it happens in many cases, that the very fact in controversy is, whether or not such things were written or spoken, and not whether [or not] they were true. In other words, such language or statement , whether written or spoken, may be the natural or inseparable concomitant [accompany] of the principle fact in controversy. In such cases, it is obvious that the writings or words are not within the meaning of hearsay, but are original and independent facts, admissible in proof of the issue." (See also, Greenleaf page 300, section 191.)

a. From the defendant's testimony, the jurors only heard half of any conversation. The jurors would have to surmise what the other party said, which made it very difficult to make sense of the conversations. The defendant was not able to defend himself because he was not allowed to tell his story to completion.
b. Since most of the incident was verbal, the conversations between the defendant and other individuals was very important

c. Many of the witnesses lied about what they said to the defendant. But since the defendant was not allowed to refute the testimony of those witnesses, there was absolutely no contradictory evidence. The jurors never got the truth. How could that be fair?

3. Did the Judge's obvious partiality prevent a fair trial?

The Judge demonstrated her bias for the prosecution by slandering the defendant, assuming the defendant was guilty, imagining the defendant would act up during the trial, and showing favoritism for the prosecution.

a. The Judge continually slandered the defendant. On 6/4/2006 10:09 the judge claimed the defendant has "issues" and expected him to "act like a jerk" (See Appendix E page E10 lines 7-9 and page E14 lines 16-18). On the morning of June 5, 2007 the judge called the defendant a "sad sack," "weird," and claimed he "has mental problems" (See Appendix E page E19 line 10 and page E20 lines 6-7).

b. The Judge assumed the defendant was guilty. On June 5, the judge remarked, "Clearly he did do something, right?" (See Appendix E page E11 lines 16-17). On June 5, 2007 the judge told Dr. Delici, "He's charged with getting into an altercation with the superintendent of schools" (See Appendix E page E15 lines 10-12), and "He gets very angry very quickly"(Appendix E page E17 line 18) though there was no evidence of that. On June 4, the judge told the defense attorney, "[The witnesses] have some justification in their view of your client" (see Appendix E page E13 lines 6-7). Even after first admitting that the defendant did not have a mental disorder (Appendix E page E18 line 9) the judge said, "Mr. Shukert has some mental health problems" (Appendix E page E19 line 10).

c. The Judge assumed the defendant would act up during the trial. The Judge assumed he would lie, "If he

stands up here and says that he wasn't in Brookline that day . . ." (Appendix E page E30 lines 9-10). On June 4, the judge asked Dr. Kelso, "Is there a mental type component to that that causes him to have some inability to do that [to maintain control]?" (see Appendix E page E21 lines 2-4). She also claimed, "He's going to start reacting, and I'm going to end up locking him up, because he's going to have an outburst" (See Appendix E page E14 lines 11-4, and page E16 lines 8-11).

d. The Judge showed favoritism toward the Commonwealth. The judge held an irrational belief that the prosecution was telling the truth, "The idea that everyone has concocted this story against him concerned me" (See Appendix E page E17 lines 12-13). She claimed, "I think the Commonwealth witnesses will be great" (See Appendix E page E12 lines 13-14). At the end of the trial the judge thanked the jurors "on behalf of the Commonwealth" here practically admitting that all along she was part of the prosecution (see Appendix E page E36 lines 22-24).

4. Can a defendant be charged with two or more separate crimes for a single action?

One thing that always bothered me about this case was the way in which the police piled one charge on top of the other, so that by the end, the defendant was facing charges that could have led to six years in prison. "Double jeopardy" is the act of being tried twice for the same crime, and was made unlawful by Amendment V. In this case, for one single act, wrestling in the garbage on a public sidewalk, the defendant was charged with Assault and Battery (See Appendix E page E24 lines 18-25), disorderly conduct (See Appendix E page E31 lines 6-7) and resisting arrest (See page E24 line 14). No matter what the prosecution wants to call the crime, it is a single act and should be tried as a single crime. (Especially considering the fact that it was Officer Malinn who initiated the "disorderly conduct" by pushing the defendant onto the

garbage (See Appendix E page E7 lines 8-9 and page E27 lines 11-14).

5. Is it legal to accuse someone of saying one thing and convicting him of saying something else?

One more thing that always bothered me about this case is how is it possible to accúse a person of saying one thing, "I'm coming back to get you. I'm gonna take you out" (See Appendix E page E4 lines 1-2 and page E23 lines 8-9), and convicting him of saying something else, "I ought to take you outside" (see page E22 lines 19-20)?

6. Is committing a suspect to a temporary involuntary stay at a mental hospital for observation and evaluation a violation of laws prohibiting incarceration without trial?

Before the trial even started, the defendant was incarcerated 21 days (MGL c. 123 s 15(a) and (b)) in violation of Amendments V and XIV of the US Constitution which state that no person should be deprived of life, liberty or property without due process of law. (See also O'Conner v. Donaldson, 422 U.S. 563, 1975.)

a. Freedom of speech. MGL c. 123 s. 15(a) requires an interview with a court psychologist. But the defendant is free to think and say anything he wishes. "Diagnosis of mental illness, leading in whole or in part to institutional commitment, made to some degree on the basis of the speech or writings of the committed individual is a violation of the right of freedom of speech of that individual" (Mills v. Rogers, 457 U.S. 291, 1982).

b. Ulterior motive. One has to wonder if the 20-day incarceration serves other purposes. For example, it prevented the defendant from looking for witnesses. After 20 days absence the defendant was not a le to locate people who may have witnessed the police brutality.

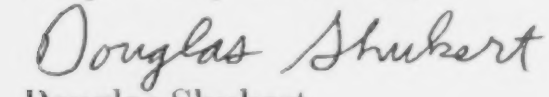
c. Ulterior motives. The 20-day incarceration also permitted the defendant's injuries, bruises and cuts to heal so that there was little evidence left of police brutality. Since cameras are not allowed in the hospital, the

defendant could only document his injuries by sketches and notes.

VII. Conclusion

Because the petitioner was not granted due process of law in that he was incarcerated without trial, prevented from telling his side of the story, and tried by a biased judge, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Douglas Shukert
Date: February 22, 2010

APPENDIX A

Decision of Massachusetts Court of Appeals

&

Denial of Re-Hearing

Commonwealth of Massachusetts
Appeals Court Clerk's Office
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106

January 27, 2009

Douglas Shukert
7703 49th Avenue North
New Hope, MN 55428-4214

Re: No. 2008-P-0028
Lower Ct. No.: 0609CR000696

Commonwealth
vs.
Douglas Shukert

Notice of Docket Entry

Please take note that on January 27, 2009, the following entry was made on the docket of the above-referenced case:

Decision: Rule 1:28 (LK-MD-FE). Judgments affirmed.
*Notice. (See image on file.)

Very truly yours,
The Clerk's Office

Dated: January 27, 2009

To: Varsha Kukafka, A.D.A.
Douglas Shukert

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston,

In the case no. 08-P-28

Commonwealth

vs.

Douglas Shukert.

Pending in the Dedham District

Court for the County of Norfolk

Ordered, that the following entry be made in the docket:

Judgments affirmed.

By the Court,

Ashley Ahearn (s/), Clerk
Date January 27, 2009.

Commonwealth of Massachusetts

Appeals Court

08-P-28

Commonwealth

vs.

Douglas Shukert

Memorandum and order Pursuant to Rule 1:28

After trial by jury, the defendant was convicted of disorderly conduct, two counts of threatening to commit a crime, assault and battery on a police officer, and resisting arrest. On appeal, the defendant asserts error in numerous respects. Having reviewed the parties' written submissions and the record, we discern neither error nor abuse of discretion warranting reversal. For substantially the reasons set forth in the Commonwealth's brief at pages 11-35, we affirm.

Judgments affirmed.

By the Court (Lenk, Meade & Fecteau, JJ.),

Ashley Ahearn (s/)
Clerk

Entered: January 27, 2009.

Commonwealth of Massachusetts
Appeals Court Clerk's Office
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106

May 13, 2009

Douglas Shukert
7703 49th Avenue North
New Hope, MN 55428-4214

Re: No. 2008-P-0028
Lower Ct. No.: 0609CR000695

Commonwealth
vs.
Douglas Shukert

Notice of Docket Entry

Please take note that on May 13, 2009, the following entry was made on the docket of the above-referenced case:

Order: Denied of petition for rehearing. (LK MD FE, JJ.) Notice/Image

Very truly yours,
The Clerk's Office

Dated: May 13, 2009

To: Varsha Kukafka, A.D.A.
Douglas Shukert

Commonwealth of Massachusetts
Appeals Court

08-P-28

Commonwealth
vs.
Douglas Shukert.

ORDER

The petition for rehearing filed by the appellant having been considered, it is ordered that the said petition be, and hereby is, denied.

By the Court (Lenk, Meade
& Fecteau, JJ.),
Lena M. Wong (s/)

Assistant Clerk

Entered: May 13, 20

APPENDIX B

Decision of Norfolk District Court

Criminal Docket Docket Entries	Defendant Name Douglas Shukert	Docket Number 0609CR000695

Date	Docket Entries
9-7-06	Δ committed for 20 days for competency + criminal responsibility to Lindeman Hospital by Dr. Hutchins under 15b Stay away from B.H.S. personnel
9-7-06	Mitt issued ret 9-26-06
9-7-06	Δ to be habed [sic] in if held on 9-29-06 on case C6 CP C2
9-29-06	May – Appearance filed Atty. Joseph Killion
9-25-06	4382 2500--
9-25-06	After hearing @ the request of the Surety Yukiko G. Shukert, the bail of $5000 posted on 9-26-2006, may be transferred in the name of Douglas Shukert as Surety & new recognizance should issue.
10-23-06	Bail appeal fax to Sup Court.
10-25-06	Bail reduced to $1000. Cash only by Judge Dorch Okarai. Notice Decision of Petition for Review of Bail
10/27/06	Bail Returned Ck #5422 - $4000.--
11-13-06	Retrial Conf Report
11-13-06	Notice of Trial Date 12-21-06
11-14-06	Case sent to Dedham
12-21-06	9:50 Default -- Warrant to be held until 12-22-06 (see J. Hogan Sullivan before issuing warrant). (J. Hogan Sullivan)sg
12-22-06	[illegible] No Fee
3-22-07	Trial

Date	Docket Entries
6-5-07	At the close of all the evidence – Denied)J. Hogan Sullivan) or C. to 6-6-07 at 12:00 p.m. Ct. #2
6-6-07	Cont. of Trial
6-6-07	Jury Trial continues. Ctrm 2 @ 12:10p Verdict 3:25p. Δ found guilty on all counts. Sentencing 3:35p. Ct. orders a §15(e) evaluation of Δ. Δ held without bail until 6-7-07. Bail revoked. Mitt to issue ret. 6-7-07 Hogan Sullivan Mitt to reflect a Q5 suicide watch.
6-7-07	Ct. #2 9:21, 9:24-9:36, 11:47-12:16 (J. Hogan Sullivan) or After hearing, the Court Orders a G.L.C. 123, §15(e) evaluation for 20 Days 6-26-07. Document handed to J. Hogan Sullivan ordered impounded.
6-26-07	Dispo.
6-26-07	Ct. #2 2:15 – 2:39 (J. Hogan Sullivan) & Conditions of Probation: Defendant may leave the Commonwealth; is to provide address to probation; to provide monthly verification to probation as to whereabouts and employment; to provide probation with written verification of anger management program; stay away from Brookline School Dept. and three individuals – Mindy Paulo, William Lupini & Janice McHugh – Brookline Public Schools Dept. No fees assessed. Probation authorized to share c.G.L.D.123,§15(e) report w/ Brookline Probation Dept.
6-26-07	Order of Probation Conditions – Filed.
7-11-07	Notice of Appeal and Motion to Withdraw filed by Atty Killion
9-28-07	Rec'd from Dedham

Date	Docket Entries
10-4-2007	Motion to Withdraw Filed 7-11-2007. Allowed J. May
1-2-08	Record Assembly.
1-2-08	Case sent to appeal court.

APPENDIX C

Decision of the Massachusetts Supreme Judicial Court denying review

Supreme Judicial Court for the Commonwealth of Massachusetts
John Adams Courthouse
One Pemberton Square, Suite 1400
Boston, Massachusetts 02108-1724
Telephone 617-557-1020, Fax 617-557-1145

Douglas Shukert
7703 49th Avenue North
New Hope, MN 55428-4214

RE: Docket No. FAR-17836

Commonwealth
vs.
Douglas Shukert

Brookline District, NO No. 0609CR000695
A.C. No. 2008-P-0028

Notice of Denial of F.A.R. Application

Please take note that on 10/29/09, the above-captioned Application for Further Appellate Review was denied.

Susan Mellen, Clerk

Dated: October 29, 2009

To: Varsha kukafka, A.D.A.
Douglas Shukert

APPENDIX D

Order of Massachusetts Supreme Judicial Court denying rehearing

Supreme Judicial Court for the Commonwealth of
Massachusetts
John Adams Courthouse
One Pemberton Square, Suite 1400, Boston, Massachusetts
02108-1724
Telephon 617-557-1020, Fax 617-557-1145

To: Douglas Shukert
7703 49th Avenue North
New Hope, MN 55428-4214

Re: No. FAR-17836

Commonwealth
vs.
Douglas Shukert

Notice of Docket Entry

Please take note that on December 22, 2009, the following entry was made on the docket of the above-referenced case:

Denial of petition to reconsider denial of FAR application.

Susan Mellen, Clerk

Dated: December 22, 2009

To: Varsha Kukafka, A.D.A.
Douglas Shukert

APPENDIX E

Excerpts from the Record

Narrative

The following is a summary of events that occurred on the date and time stated below. On Wednesday, September 6th, 2006 at 15:37 hrs, I was dispatched to the 5th floor of the Brookline Town Hall at 333 Washington Street, along with the 543 unit, Officer Malinn, for a man threatening the employees and refusing to leave the office. Officer Malinn and I were met by William Lupini. Lupini is the superintendent of the Brookline Public Schools. Lupini stated an irate parent, Douglas Shukert, came into his office and threatened to beat him up. At this time I attempted to get a description while Officer Malinn left to look for Shukert. Lupini described Shukert as a white male in his 40's wearing a blue Gap T-shirt and tan shorts. I gave this description out to the responding officers and asked Brookline dispatch to run an address check on Douglas Shukert. Brookline Dispatch broadcasted Shukert's last known address as 1463 Beacon Street #42. Officer Malinn observed a male wearing a blue Gap T-shirt and tan shorts walking on Park Street towards Beacon Street. Officer Malinn asked if he could talk to him about what happened at the superintendent's office. Shukert stated, "Fuck him he's an asshole. Am I under arrest?" Shukert then confronted Officer Malinn. Officer Malinn called for officer assistance.

At this time I responded to Officer Malinn's location. Upon my arrival Officer Malinn, Officer Shea and Sergeant Ward were handcuffing Shukert. Shukert was placed under arrest for disorderly conduct, assault and battery on a police officer, resisting arrest (see supplemental report by Officer Malinn). At this time I informed Sergeant Ward that superintendent Lupini who was threatened by Shukert informed me Shukert left two children in a playground unattended but nobody knows where.

After Shukert was handcuffed he continued to resist. Sergeant Ward instructed Shukert to calm down. Shukert looked at Sergeant Ward and stated, "I'm going to fucking kill you." Sergeant Ward instructed Shukert to calm down. Shukert continued to act irrationally. He continued to yell and scream using profanity. As Shukert was being walked to the Police cruiser he was dragging his feet and screaming, "Where the fuck is my fucking fan. You fucking assholes took my fucking fan. I'll get you fucking assholes for taking my fucking fan." Shukert was transported to the Brookline Police Station by Officers Weinstein and Taggart and booked by Lte. Murphy. Before the booking Sergeant Ward asked Shukert where his two children were. Shukert answered, "Fuck you." Sergeant Ward stated we are concerned about your children, where are your children. Shukert continued his irrational behavior by repeatedly saying fuck you each time he was asked about his children. Shukert's behavior would lead a reasonable person to believe Shukert is under substantial emotional distress.

After clearing Park Street, I returned to 333 Washington Street to interview Superintendent William Lupini and his staff. Lupine stated his secretary, Janice McHugh, told him she received a phone call from Mindy Paulo, who is a coordinator for the English Language Learner program. Paulo told McHugh a parent, who is very upset, is on his way over to see the superintendent. Lupini explained Shukert does not have the proper documents such as copies of a lease, utility bill, etc. to prove ha has residency to allow his two children, Melody and Tyler Shukert, to attend Brookline Schools. Lupini stated Shukert became frustrated and began escalating his demeanor by raising his voice and pointing his finger in Lupini's face. Lupini stated he repeatedly tried to calm Shukert down and explain to him the school policy but Shukert got very agitated. Shukert told him he was trying to keep his kids out of school. I asked Lupini exactly what Shukert said to

him. Lupini stated, "He was saying things like, 'I'm coming back to get you. I'm going to take you out.'" Lupini stated he deals with parents all the time and understands they are emotional about their children. In the 12 years as a school administrator he has never seen a parent like this. Lupini stated he was in fear that Shukert would beat him up. Lupini stated, "When he stood up, pointed his finger towards me and said, 'Fuck you!' I immediately yelled to Janice to call the police." Lupini stated he was nervous and knew this situation was out of his league.

I then spoke to Janice McHugh. I asked McHugh when Shukert entered the office. McHugh explained she received a phone call from Mindy Paulo. Paulo told McHugh that a Douglas Shukert was walking over to see the superintendent about his children. McHugh stated Paulo's voice sounded shaky on the phone and Paulo told McHugh that Shukert made her very nervous.

McHugh stated Shukert came into the office and demanded to see the superintendent. McHugh told Shukert he is in a meeting and to have a seat. McHugh stated he was very confrontational, he would not sit down and at one point he left and then came back. When Shukert returned he told McHugh he was going into Lupini's office. McHugh called Lupini on the phone and Lupini told McHugh to send him in. McHugh stated, "We get some upset parents, but he was different."

At this time I went to 88 Harvard Street, the Pierce School, and interviewed Mindy Paulo. Paulo stated at approximately 2 o'clock, Douglas Shukert came into her office and demanded his son and daughter be accepted into Brookline Schools. Paulo stated Shukert was very argumentative from the beginning. He became very angry and kept demanding his children be admitted to school. Shukert then told Paulo he was going to the superintendent. Paulo stated, "He said you're not going to

like what I'm going to do." Shukert left the office and Paulo called Janice McHugh to let her know Shukert was on his way.

One count of threats to commit a crime will be added for threatening to kill sergeant Ward and a second count of threats to commit a crime for threatening to injure William Lupini. Officer Malinn filed a 51A with the Department of Social Services (see supplemental report).

Submitted By Officer, I.D.
Sullivan, John L. 66000

Narrative

The following is a summary of the events occurred while assigned to the 543 unit.

On the above date and time the 544 unit, PO John Sullivan, and I responded to the superintendent of schools office on at Brookline Town Hall. Upon our arrival, the superintendent informed us that a man, who threatened to beat him up, had left the office several minutes earlier. I left Town Hall to search for the suspect while PO Sullivan remained to gather further information.

PO Sullivan then radioed a description of the suspect: W/M, in his forties, wearing a blue T-shirt with Gap written on the chest and tan shorts. He also radioed that the suspect's name was Douglas Shukert and that his address was 1463 Beacon Street.

While traveling west on Park Street, I observed a subject fitting the description in front of 30 Park Street. I pulled to the curb, radioed by location, and exited the cruiser. I approached Mr. Shukert and asked if I could speak with him about what happened at the superintendent's office. He stated "Fuck him, he's an asshole. Am I under arrest?" I told Mr. Shukert that I just wanted to speak with about the incident. He said, "Fuck you" and walked past me, making contact with my left shoulder with his left shoulder. I stepped in front of him and told him to calm down. Mr. Shukert then looked around and asked, "How many are with you? Are you alone?" He then removed a bag he was carrying over his shoulder and dropped it to the ground. Mr. Shukert then made fists with both hands, bent his knees and elbows and stated, "Do you want to try something?" At this time I removed the baton from my duty belt and extended it. I then radioed for additional units. I

told Mr. Shukert to relax his hands and place them by his side. After several moments he put his hands down, picked up his bag and began to walk away. I told Mr. Shukert to place his hands behind his back. He said, "Fuck you." I then took hold of his left wrist. Mr. Shukert pulled his hand away and began to vigorously resist my attempts to place his hands behind his back. I then pushed Mr. Shukert towards the ground in an attempt to cuff him. He landed on several trash bags that were against the curb. He placed his hands in front of him, pushed himself onto his knees, and pushed up against me. As I attempted to place him in a prone position, he was attempting to turn around to face me. He repeatedly stated, "Do you want to fight?" At this time, additional units arrived on scene. After being cuffed Mr. Shukert asked Sergeant Ward and several officers if they wanted to fight. Mr. Shukert was transported to the Brookline Police Station by the 541 Unit, PO's Ferris and Shea. Mr. Shukert was processed by the 554 unit, PO's Taggart and Weinstein. He was informed of his rights and booked by Lte. June Murphy.

After Mr. Shukert was transported, I was approached by Keri Campiola. She stated that she resides at 28 Park Street (3). Ms. Campiola stated that she was in her apartment when she heard loud voices. She looked out her window and observed me trying to subdue Mr. Shukert. Ms. Campiola stated that she heard him state, "Do you want to fight?" several times.

A short time later, I was dispatched to 1463 Beacon Street to confirm Mr. Shukert's address. While I was there, the 551 Sergeant Ward radioed me that Mr. Shukert's two children, Kyle (13) and Melody (10). May have been left unattended in apartment 42. He instructed me to gain access to the apartment if I was unable to raise anyone at the door. When I received no answer at the door, I asked Brookline Dispatch to call the emergency phone number located above the mailboxes at 1463 Beacon Street. Minutes

later I was directed to contact the building manager at the front desk of 1459 Beacon Street.

I then went to 1459 Beacon Street and explained the situation to the building manager, Bill Mihaloponus. We both went 1463 Beacon Street where Bill opened the door with his key. We both entered the apartment. I conducted a visible sweep and confirmed that there was no one inside. As we walked through the kitchen I observed that the door to the refrigerator and it's freezer compartment were open. There did not appear to be food in either section of the refrigerator. We both exited the apartment. As we were leaving the front door to the building, Bill indicated that a young girl who was approaching the building was Melody Shukert. I identified myself to Melody and informed her that her father was at the station. Melody did not appear to speak much English but was able to indicate that her brother was at a park. Bill stated that he knows that they play at Griggs Park. I then drove Melody to Griggs Park where we met Kyle. I explained the situation to Kyle and asked him to come with me to the Brookline Police Station. I transported Kyle and Melody to the police station. The children were brought to an employee break area which has a television. They were provided with pizza and soda.

I contacted DSS and filed a 51A report over the phone. A copy of the report was faxed to DSS. At approximately 19:15 HRS, DSS investigators Dominique Gutierrez and Lisa Leite arrived at the police station. Sergeant Ward and I spoke with them about the situation. During our conversation, front desk Officer Vierre informed us that Mr. Shukert had covered the surveillance camera in his cell with toilet paper. Sergeant Ward, myself, and several other officers responded to the holding area. Mr. Shukert was being verbally abusive and was directed to uncover the camera. He refused, and when we entered the cell we attempted to handcuff him for our safety. He once again tensed his body, pulled his arms in and resisted attempts to

cuff him while continuing to swear at us. Mr. Shukert was placed in ankle cuffs in addition to the hand cuffs. Once Mr. Shukert had calmed down, Ms. Gutierrez and Ms. Leite were brought to the cell block. They identified themselves to Mr. Shukert and asked him if he had any family in Massachusetts who could take custody of his children. He replied that they should call his lawyer. When they told him that they could only release them to a family member, he continued to tell them to call his lawyer.

Ms. Gutierrez and Ms. Leite then spoke with Melody and Kyle. After the interview, Kyle and Melody were taken into DSS custody.

Submitted By Officer, I.D.
Malinn, Christopher Brian 10112

Mr. Mohan: Of course.

Judge: -- on the last time this case was here, and it may not be an issue of competency.

Mr. Mohan: Sure.

Judge: But I've been wrong before and I see him sitting at the table and he keeps writing and I mean there's some issues here. And the only thing from the Court's perspective is that if it's an issue that I have to examine this morning, I'm prepared to do that, which is going to cause some delay.

Mr. Killion: I have seen Dr. Kelso in the building today. I can state that I did walk by him. I don't know if he's here.

But if counsel wants another –

Judge: Well if he knows I'm looking for him he'll (inaudible) or Woburn, one of the two (inaudible).

Are you raising that issue. I mean it seems to me that –

Mr. Killion: Well, it's raised. It's not (indiscernible at 10:13:52) psychiatrist, it's not.

Judge: It's raised. Maybe he has to be examined this morning.

Mr. Mohan: In that case Your Honor is

Mr. Killion: Yes.

Judge: Okay.

Mr. Mohan: Because he was in cusody, the wife was still in Japan. The kids were in DSS and he was out on bail. And they were going – undergoing the mental health treatment obviously the evaluations (indiscernible at 12:15:08 p.m.)

Judge: All right. Could we get him to do a change of plea on any of these charges? [you know, the defendant never ever even entered a plea]

Mr. Killion: I don't think so.

Dr. Kelso: As it relates to incompetencey [sic] to stand trial evaluation, I explored, you know, the notion of plea bargaining and his representation in the interview was essentially why should I plead guilty to anything that I didn't do.

Judge: Okay. Did he do – clearly he did something, right?

Dr. Kelso: It al depends how you look at it.

Mr. Killion: Yes. It is that type of thing. It is really not (inaudible) could say that he was disorderly because he went there, but he (inaudible) on purpose. You could say that there was a resisting arrest, but he did ask the officer if he was under arrest, and the officer (inaudible) in front of him and

there was contact because he was trying to go straight down the sidewalk

Judge: Right.

Mr. Killion: And (inaudible) they beat him up and he got a sort of map of his injuries.

Mr. Mohan: All this, of course, comes from the mouth of the defendant [not true]. It's the Commonwealth's concern is that the defendant (inaudible) is really, nothing other than the defendant's word that he's gonna abide by this, which is exactly why –

Judge: Well, except that a couple of things have happened. One, I mean, I think that the Commonwealth witnesses will be great [any bias here???], but the actions of the defendant have been with regard to what he (inaudible) best interest of his children.

Mr. Mohan: I would agree with that.

Judge: Okay. And there is no question, I don't think, that these children have returned to Japan.

Mr. Mohan: None that I have.

Judge: Okay. And it seems to me that we've got some – how long was he held? Can you tell me how many days he's got?

Mr. Mohan: He says 20 –

Judge: Twenty. You did the 15B within twenty, right?

I just don't want to – this is what I'm trying to avoid. I'm trying to (inaudible) having these witnesses come in here, they've got a position. That position is –

Mr. Killion: Sure. It's just going to stoke the fire.

Judge: -- has, is there some question (inaudible) have some justification in their view of your client. However, with the passage of time and he goes out of the country and –

Mr. Killion: And his kids are out of school.

Judge: The kids aren't there anymore. I mean I think the fact his child got put in DSS custody for a period of time (inaudible) I think that's kind of a harsh thing. Not that it was, nobody's fault. I mean clearly it was somebody's fault [yeah, whose?], but I mean (inaudible) that's a significant thing that happened to him.

Mr. Killion: As his attorney (inaudible).

Judge: And he's got no record, and he's done 20 days in Lindemann.

Mr. Killion: What is the objection to pretrial probation? Because I have gone over and over that with him [another lie] and that would serve the same purpose.

Judge: He's [Mohan] telling me he can't look at

that. That's just – this is the problem that I have and that is these witnesses, they sit in here all day, they're not happy being here –

Mr. Mohan: (inaudible).

Judge: And if the, you know, I've seen witnesses testify and, you know, they don't like what happened out there this morning, their testimony is going to be a little bit more strident than it might have been if they hadn't been here all day. And then it's going to be a little bit more strident and he's going to start. He's going to start reacting, and I'm going to end up locking him up because he's going to have an outburst and, you know, I tend to be relatively patient, and I want to be patient with this guy.

Mr. Killion: Oh, I know that. I understand (inaudible).

Judge: My hands could be tied at the end of the day if he acts like a jerk. I would at least have to have him in custody over night. I'm just trying to avoid all of that. [No concern that the witnesses lie.]

Mr. Mohan: I think that's (inaudible).

Judge: You know because – and, unless – any other, you're standing here, Doctor Fred, what have you got to tell us?

Dr. Kelso: I also feel compelled to tell you,

(Begins at 9:24:23 a.m.)

Judge: Let me see Dr. Delici at sidebar.

Clerk: Dr. Delici?

Judge: Mr. Killion – is Mr. Killion – I saw Mr. Killion. Mr. Killion, please.

(Non-related maters discussed.)

(Sidebar conference at 9:25:04 a.m.)

Judge: I started a trial yesterday. Mr. Killion represents Mr. Shukert. He's charged with getting into an alteration at the Brookline (background noise, indiscernible at 9:25:14 a.m.) superintendent of schools over an issue of the appropriateness of a document he was trying to use to establish his residency for his children to be able to go to school.

The situation escalated significantly and he was placed under arrest and he's charged with threats to two officers, assault and battery on one of the officers, disorderly conduct. (Indiscernible at 9:25:42 a.m.)

Apparently when he was arrested, when he was in Brookline, and this was back in September of -06 a 15B evaluation was done at the Lindemann. This is a gentleman who has no record. He had been living in

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Plea, let him go to Japan and that would be the end of it. He wouldn't evendo that. (inaudible) only one count. He wouldn't have had to admit to anything, but he was not – Mr. Killion wasn't able to persuade him to do that.

So we had – Dr. Kelso spoke with him yesterday at some length and concluded that he was competent to go forward with trial yesterday. But that he was of a character that as his stress level increased, as the trial went on, that he was concerned that he would be unable to control himself in the courtroom.

And we saw some glimpses of that yesterday. We didn't empanel until after lunch so we only had one witness testify yesterday. During the time the witness was testifying, he was gesturing at the witness, saying – although purportedliy saying it to Mr. Killino – loud enough so everybody could hear, the witness is lying, she's lying. He kept saying that.

In addition, my observation of him is that as he's sitting at the table he's writing feverishly in a notebook. And I stopped the trial about 4:00 so that I could address him outside the presence of the jury and I said, look this is a trial you have to follow certain rules, I'm not going to let you act in this

He's a little bit harder to hear. Unfortunately, I come across in a booming manner.

Dr. Delici: There's a (inaudible).

Judge: There's a (inaudible).

Dr. Delici: He said to you that he can't get a fair trial?

(Simultaneous speech at 9:31:03 a.m.)

Dr. Delici: . . .outside the presence of the jury?

Judge: Yes. He cannot get a fair trial. Everyone is lying against him. So there is a couple of issues: One, is his behavior in the courtroom. Two, (inaudible) some of that at sidebar before picking the jury and the idea that everyone has concocted this story against him concerned me. And his inability despite, I'm pretty clear on he had to sit down and stop doing this, I warned him a couple of times before I (inaudible) to send the jury out. I asked Mr. Killion to warn him before I sent the jury out. And he wasn't able to comply. He gets very angry, very quickly. And so I (indiscernible at 9:32:01 a.m.) competency.

Dr. Delice: I haven't seen him yet. I wouldn't want to –

Judge: No.

Dr. Delici: -- wouldn't want to say it on prejudging him, but it sounds like you have enough right now to send him to the Lindemann.

Judge: Well, okay.

Dr. Delici: (Indiscernible at 9:32:15 a.m.) Sounds like he's – did they say he had a mental disorder?

Judge: No.

Mr. Mohan: No.

Dr. Delici: Did they (inaudible)?

Judge: (Inaudible).

Unidentified Speaker: They're not consistent in their – I've seen some very strange things.

Judge: Well this is what I've got. This is the 15-day competence – I haven't read that, but usually they – and it was interesting that Dr. Hutchins is quoted in here –

Dr. Delici: He's the one who saw him in Brookline?

Judge: Yes. And, I mean, Dr. Hutchins didn't mince any words from what I read in here. I don't find him to be someone who lightly finds someone not competent –

Dr. Delici: Right.

2007.6.5 11:08 a.m.

Bailiff: You may be seated Court is back in session.

Judge: There is just one trooper?

Clerk: Yes, your honor. The only other matter we have on trial is...

Judge: Let me see Mike and Kenny on this.

Judge: I had a conversation with Dr. Kelso this morning about Mr. Shukert. We are going to try to do the trial. Mr. Shukert has some mental health problems. I do not want it to get worse than it already is. I don't want him jumping up.

Bailiff: No

Judge: Unless we have to. If he goes after a witness or something, obviously we have to restrain him. He may talk out. At least today he said I am the boss, so....I am

the only one who cannot get a car in my house. But I am the boss here. So this kind of a ... Kelso said he might deteriorate and then I might have to do a 15a. let's try to get through this as best we can. So as long as I have two of you, that is good. I think he is harmless. He is weird, but I think he is more of a sad sack than a dangerous guy. And that is pretty much what the doctor is telling me. The doctor told him I am not going to take any guff from him, he has got to behave, so. I am going to try to get this done today. Okay

Bailiffs together: Okay your honor.

Judge: All right, are we ready for the jurors?

DA: we are.

Judge: All right, let us bring in the jurors, please.

Judge: I thought Beth was coming in.

Bailiff: Please rise for the jury. (pause) You may be seated.

Judge: Is the issue about his ability to maintain control in the courtroom, is there a mental type component to that that causes him to have some inability to do that?

Dr. Kelso: I would say in this very high stakes situation for him, the challenge to maintain his control is proportionately greater as a function of what I think are some characteristics of him [like, he's honest]. This is the first time I've met him, but I have some preliminary hypotheses about what's going on here.

Judge: What are they?

Dr. Kelso: He has a suspicious streak. He's vulnerable to being quick to anger. And on an intellectual level, he understands the high stakes in this situation for him. So on the one hand he wants to go forward to resolve this, hoping that the outcome will be favorable to him, but on the other hand, I think he fears that the outcome will not be favorable to him. So, I think his behavior can be understood as an effort to negotiate that problem. From a psychologist perspective.

Judge: Okay. Anything else I should know?

Dr. Kelso: I'm prepared to testiy, you know, but that's the kind of headlines.

Judge: Okay. That's what I'm trying to get.

whether he was referencing one particular item, or not, then my children will start tomorrow.

DA: And, did you respond to that?

Lupini: I did.

DA: And what was your response?

Lupini: I said, I am not certain that can happen. We still have the issue of the ELL screening, if that is to take place. We still have the issue of the school placement, given that we have a program for students of Japanese language at the Pierce School [not Pierce, but Lincoln] and at the Lawrence School and we still have the issue of the grade level placement that would need to be straightened out, so I cannot say that it would not happen, but I cannot promise that it would.

DA: And how did the defendant react to ...

Lupini: He said, I am going to bring that documentation back, and you are going to allow my kids in school , and I ought to take you outside [here lying again].

DA: When he said. Let's take each statement one at a time. When the defendant stated that he was going to bring back that documentation, what was his body language like and general demeanor after you had explained about the policy about things he still needed to do before his kids could register in school.

Sullivan: Correct.

Joe: And do you recall what words he said, what Mr. Lupini said that Mr. Shukert said?

Sullivan: Yes, I do.

Joe: And what, if anything, from that night do you recall that Mr. Lupini told you?

Sullivan: He said, "I'm coming back to get you. I'm going to take you out."

Joe: You have been a police officer a long time, have you not?

Sullivan: Eleven years.

Joe: So you know that if someone has alleged to make a threat, you make sure you get the words right, is that fair to say?

Sullivan: Correct.

Joe: So the best thing you can tell the ladies and gentlemen of the jury about what those words were are exactly what you said now, is that fair to say? [Why would a jury believe anything these guys are saying?]

Sullivan: Correct.

Joe: And you talked to Mrs. McHugh, too, did you not?

Sullivan: Yes, I did.

Joe: And she told you she did not hear what was said, is that fair to say?

Judge: Sustained.

DA: When you first arrived at the scene, had Officer Malinn already placed handcuffs on the defendant?

Ward: No.

DA: When you arrived at the scene, did you attempt to handcuff the defendant? [For what crime?]

Ward: I did.

DA: Were you able to do so with yourself and Officer Malinn?

Ward: No. [No, first they had to choke the defendant and slam his face into the back window of a car.]

DA: And why not?

Ward: He was resisting us. [Ward's voice is a little soft when he is lying.]

DA: You say he was resisting us, what specifically was the defendant doing?

Ward: He was flaying his shoulders and elbows in an agitated manner.

DA: Could you see if he was making contact with Officer Malinn?

Ward: Yes.

DA: And was he?

Ward: Yes.

reflect that the witness has identified the defendant.

Judge: Yes. [12:51:20 p.m.]

DA: When you first made observations of the defendant, what was he doing?

Malinn: He was walking up Harvard Street, excuse me, Park Street towards Beacon Street.

DA: At some point did you approach him?

Malinn: I did.

DA: Did you have a conversation with him?

Malinn: Yes.

DA: What was the first thing you said to the defendant?

[Here, no pauses between question and answer nor between answer and question]

Malinn: At that point Officer Sullivan had identified him by name, so I addressed him by name.

DA: What was the name that you used?

Malinn: Douglas Shukert.

DA: After you addressed the defendant by name, what exactly did you say to him?

Malinn: I asked him if I could speak to him about the incident that had occurred at the superintendent's office.

DA: Did the defendant reply?

Malinn: Yes, he did.

DA: And how did he reply?

DA: Did he make any further statement.

Malinn: I once again just asked him if I could ask him about what had happened.

DA: And did he respond to you at that time.

Malinn: He did, he said, "Fuck you" and walked toward me, made contact with me and walked past me. [Here lying by tone of voice.]

DA: When he said, uh, he made a statement to you and then made contact with you, exactly what did the defendant do in that instance?

Malinn: While I was standing several feet in front of him, he walked directly towards me with his shoulders squared and made contact with his left shoulder against my left shoulder.

DA: After he made contact with his shoulder to your shoulder, what did you do?

Malinn: I stepped in front of him and told him to calm down.

DA: Did he have a, what was his reaction?

Malinn: He, at that point there was several feet between us he looked around, then he looked back at me and asked me a question. [Has this been rehearsed?]

DA: What was the question the defendant asked you?

Malinn: There is.

DA: Were there any objects located on the sidewalk on that day?

Malinn: Yes, there were numerous trash bags against the curb. [Should be "along" the curb.]

DA: Did in any way those trash bags affect your ability to attempt to place the defendant in handcuffs?

Malinn: Yes.

DA: And how did they so affect?

Malinn: After being unable to handcuff him standing, I attempted to push him to the ground to a prone position to handcuff him and he laid then on top of several trash bags.

DA: And when the defendant was on top of those trash bags, were you then able to get the defendant into handcuffs?

Malinn: No.

DA: As you are attempting to get the defendant into custody, are you saying anything to him?

Malinn: I am telling him to put his hands behind his back and stop resisting.

DA: And is he saying anything in response?

Malinn: As I was attempting to push him down from the position he had gained he continually tried to turn around to face me and continually, repeatedly

Joe: I direct you to this area here.

Malinn: Oh, yes sir, I did leave out a statement. [Is this perjury?]

Joe: And what was that?

Malinn: He asked if he was under arrest.

Joe: And you did not respond to that, did you? [Isn't Malinn required by law to answer?]

Malinn: No, I told him that I wanted to speak with him about the incident at the

Joe: But you did not tell him if he was under arrest or not?

Malinn: No, not at that point, no

Joe: And you have been a police officer how long?

Malinn: 12 years.

Joe: So you are aware that that is a voluntary thing when someone speaks to the police when they are not under arrest, are you not?

Malinn: Yes sir.

Joe: So it is fair to say that Mr. Shukert could have chosen not to speak with you, is that fair to say?

Malinn: Well, I was conducting a threshold enquiry into the alleged crime that had occurred sir.

Joe: But the crime did not occur in your presence, did it?

the first area where contact was made?

Malinn: No.

Joe: It was as he was being put into either the van or the cruiser, is that correct?

Malinn: I believe so, yes sir. ["Believe?"]

Joe: [Short pause] And when you, after you had spoken to, you responded with Officer Sullivan, did you not, to the town hall.

Malinn: Yes sir.

Joe: And you talked to the superintendent and Ms. McHugh for a very short period of time?

Malinn: Yes sir.

Joe: And then you left. While you were there, nothing occurred in your presence, did it?

Malinn: No sir.

Joe: So none of what was said occurred in your presence, is that fair to say?

Malinn: That is correct.

Joe: And based on the information that they gave you, you went out and tried to stop the subject, is that correct?

Malinn: Correct.

Joe: Okay. No further questions.

DA: Just very very briefly.

Joe: I am sorry, just one second.

In that statement, just approach sidebar and we'll deal with it, at that time. Although I will say that the fact that you're not introducing the document, does not mean it's not available to the Commonwealth for impeachment purposes.

Mr. Killion: No, I know. I mean it – but what I'm saying is each question stands on its own. It doesn't matter that it's in here. This isn't a sworn document or anything like that.

Judge: I understand that. I understand that. If he stands up here and says that he wasn't in Brookline on that day and he's got a letter that your client sent to the school committee that says I was in Brookline that day, then he can impeach him with that statement and he doesn't have to put the whole statement in.

Mr. Killion: Well yeah, but it would've had to been produced to me before this and I got this copy from my client, not from the Commonwealth.

Judge: I don't think that they have an obligation to provide that to you if they're going to use it for impeachment.

Mr. Mohan: That's correct, your honor.

Judge: They're not offering it in their

Disorderly conduct the only person who was there that has already – was this last witness that was (inaudible). And –

Judge: Let me stop you there. Is that the theory of your disorderly conduct?

Mr. Mohan: The theory is that they engaged in fighting or tumultuous behavior in a public place.

Judge: All right. Go ahead.

Mr. Killion: I'm saying that what this woman saw was one thing but the question is whether she saw a person being restrained by a police officer. She did not say that she was alarmed or any of those things.

Judge: Mm-hmm.

Mr. Killion: She said she didn't (inaudible) that a police officer may have been hurt or something (inaudible) the two individuals between her seeing (inaudible), so what she saw was not of a concern to her. For whatever reason to take somebody into custody I saw that there's enough (inaudible).

Judge: Okay.

Mr. Mohan: Your Honor, (inaudible) –

Judge: Wrote down this last name, so Okay.

Mr. Mohan: Your Honor, the Commonwealth would

Mr. Mohan: Objection.

The Court: No, no, no. [Laughs]

The Witness: Huh?

The Court: Just what you said.

The Witness: Can I say I heard?

The Court: No. You can't say anything that someone else told you.

The Witness: Hmm, interesting,.

By Mr. Killion:

Q Did you –

A My kids were pending. Which was a shock to me.

Q I'm sorry, what did you say?

The Court: No, no, no. You can't tell us what they told you.

The Witness: My kids were pending?

The Court: So we'll start again. That you reported to the Lawrence School on Tuesday morning around 10:30.

The Witness: Yeah.

The Court: All right.

The Witness: And –

The Court: Listen to Mr. Killion's question.

By Mr. Killion:

And did you file forms to admit the children to school

go to another location of the school department?

The Witness: Can I ask you a question?

The Court: Sure.

The Witness: How can I explain what happened if I can't say what people told me?

The Court: No. Well I have to – I have to follow the rules of evidence. And I cannot let you testify about what someone else said because that's what we call hearsay.

The Witness: But everybody else has testified that I said things to other people.

The Court: Well you can testify what you said, you saw, you did, you – but you cannot testify about what someone else said.

The Witness: Can I say what I heard?

The Court: No. Not if it's something that someone said. [And everything I know about the world is what someone has told me.]

The Witness: Well it makes it impossible –

The Court: Why don't – why don't – no, hang on a minute because this is – these are the same rules that I followed when the other witnesses were testifying. They were not allowed to testify to something that they heard, only what they observed by themselves or what they, themselves said or what you said.

The Witness: Only what I said?

The Court: Yes.

The Witness: What I said is okay?

The Court: Well it depends on whether or not it's a – it's an exception to the rule of – about hearsay. And a statement of the defendant is admissible as an exception to the hearsay rule. [so that they always get a conviction.]

The Witness: I can't say anything what somebody told me?

The Court: Correct.

Mr. Killion: Let me ask some more questions.

By Mr. Killion:

Q When you were in – were you in Mindy Paulo's office?

A Yes.

Q Okay. And what did you say to her, if anything?

A I asked her if she had anything to do with what school the kids would go to.

Q Now what did you mean by that? Did you mean the Lawrence or the – the other school that had Japanese?

A Lawrence or Lincoln. [This too is hearsay.]

Q Okay. And after you asked about that, what did you say about the proper forms and any – if anything.

one-on-one situation, is that right?

A No, no.

Q with the police?

A No. Afterwards I thought it probably sounded pretty stupid, but at the time --

Q You might be right about that.

A Yeah.

Q But, so you weren't trying to ascertain whether, you know, you were going to take him on one on one, is that right?

A Well, it's not fair to fight with a cop because you can't hit him. It's against the law.

Q Well, you'd agree with me that you and the police officer made physical contact, correct?

A Well, he made physical contact with me.

Q You and he were touching at certain periods of time, is that right?

A He grabbed me. I mean, you know, what am I supposed to do about that?

Q Prior to that you said that he grabbed your bag?

A Yeah.

Q And actually, he took your bag?

A Yeah. Took it right off.

Foreperson: Guilty

Clerk: With regard to the count of resisting arrest, is the defendant guilty or not guilty?

Foreperson: Guilty.

Clerk: With regard to the count of assault and battery on a police officer, Christopher Malinn, is the defendant guilty or not guilty?

Foreperson: Guilty.

Clerk: With regard to the count of threatening to commit a crime against William Lupini, is the defendant guilty or not guilty?

Foreperson: Guilty.

Clerk: So say you madam foreperson?

Foreperson: Yes.

Clerk: So say you members of the jury?

Jurors: Yes.

Clerk: Madam foreperson, members of the jury, in the case of Commonwealth versus Douglas Shukert, harken [sic] to your verdict as the court has recorded it. Upon your oath you say that the defendant is guilty and so it is recorded.

Judge: Ladies and gentlemen of the jury, on behalf of the Commonwealth and the parties to this case, I want to thank you very much for your jury service. It was a little longer than I had told you it would be